

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FERNANDO GASTELUM,

Plaintiff,

v.

FIVE BELOW, INC.,

Defendant.

Case No. 1:22-cv-00825-AWI-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
ACTION FOR LACK OF JURISDICTION
AND FAILURE TO STATE A CLAIM

(ECF No. 5)

Plaintiff Fernando Gastelum (“Plaintiff”) is proceeding *pro se* in this accessibility litigation pursuant to the Americans with Disabilities Act (“ADA”) and state law against Defendant Five Below, Inc. (“Defendant”).

On July 12, 2022, the assigned Magistrate Judge *sua sponte* screened the complaint pursuant to its independent obligation under Federal Rule of Civil Procedure 12(h)(3) to determine whether the Court has subject-matter jurisdiction over this matter. (ECF No. 2.) Finding the complaint did not allege facts sufficient to establish subject-matter jurisdiction, the Court dismissed the complaint with leave to amend. Plaintiff filed his first amended complaint on August 23, 2022. (ECF No. 4.) On October 7, 2022, the Magistrate Judge screened Plaintiff’s first amended complaint and issued findings and recommendations that the first amended complaint be dismissed, without leave to amend, as frivolous due to lack of subject-matter jurisdiction and for failure to state a claim; or, alternatively, if the District Judge deemed the first amended complaint to adequately allege Article

1 III standing for jurisdiction purposes and to state a claim under the ADA, that the first amended
2 complaint proceed on Plaintiff's ADA claim only and the Court either decline to exercise
3 supplemental jurisdiction over Plaintiff's state law claims or issue an order to show cause why it
4 should not decline to exercise supplemental jurisdiction. (ECF No. 5.) Plaintiff was advised that
5 any objections to the findings and recommendations must be filed within twenty-one days of the
6 Magistrate Judge's order, that is, by October 28, 2022. The deadline to file objections to the
7 findings and recommendations has passed, and no objections have been filed.

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
9 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the findings
10 and recommendations to be supported by the record and by proper analysis.

11 Accordingly, IT IS HEREBY ORDERED as follows:

- 12 1. The findings and recommendations issued on October 7, 2022 (ECF No. 5), are adopted
13 in full;
- 14 2. The first amended complaint is dismissed, without leave to amend, as frivolous due to
15 lack of subject-matter jurisdiction and for failure to state a claim; and
- 16 3. The Clerk of the Court is directed to close this case.

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18 IT IS SO ORDERED.

19 Dated: January 11, 2023


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SENIOR DISTRICT JUDGE